Office-Supreme Court, U.S.
FILED
OCT 28 1983
ALEXANDER L. STEVAS,
CLERK

Nos. 82-206 and 82-229

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioner,

—v.—

CARL W. STOTTS, ET AL.,
Respondents.

MEMPHIS FIRE DEPARTMENT, ET AL.,
Petitioners,

—v.—

CARL W. STOTTS, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS SUBMITTED BY THE AFFIRMATIVE ACTION COORDINATING CENTER THE NATIONAL CONFERENCE OF BLACK LAWYERS THE NATIONAL LAWYERS GUILD THE CENTER FOR CONSTITUTIONAL RIGHTS

[continued on inside cover]

HUEY COTTON
The Affirmative Action Coordinating Center: A Project of the National Conference of Black Lawyers, The National Lawyers Guild, and The Center for Constitutional Rights

JOHN BRITTAIN
National Conference of Black Lawyers
126 W. 119th Street
New York, New York 10026

JEANNY MIRER
JULES LOBEL
National Lawyers Guild
853 Broadway, Suite 1705
New York, New York 10003

FRANK E. DEALE
MORTON STAVIS*
c/o Center for Constitutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

**Counsel of Record for Amici Curiae*

Inside Front Cover

All Peoples Congress
Asian Law Caucus, Inc.
Association of Oregon Black Lawyers
Black Educators' Alliance of Massachusetts
Black Women for Policy Action
Boston Mobilization for Survival
Chinese-American Citizens Alliance
Council of Minority Educators In Massachusetts Public Colleges and Universities
Educators United
Esperanza Unida
Gray Panthers
La Alianza Legal De Oregon
La Casa Legal
La Raza Central Legal
League of Martin
Massachusetts Citizens Against the Death Penalty
Massachusetts State Division, American Association of University Women
Minority Law Students Association
National Anti Racist Organizing Committee
New England Minority Women In Business
Parish Council of Holy Angels Catholic Church
Vulcan Pioneers of Newark, N.J.
Willamette Valley Immigration Project
Women's Bar Association of Massachusetts
Women's Coalition, Inc.
Women for Economic Justice
Women's Job Counseling Center

Nos. 82-206 and 82-229

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

FIREFIGHTERS LOCAL UNION No. 1784

Petitioner,

v.

CARL W. STOTTS, ET AL.,

Respondents.

MEMPHIS FIRE DEPARTMENT, ET AL.,

Petitioners,

v.

CARL W. STOTTS, ET AL.,

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

Brief Amici Curiae of the Affirmative Action Coordinating Center; The National

Conference of Black Lawyers; The National Lawyers Guild; The Center for Constitutional Rights and other organizations in support of Respondents.

Consent of Parties

Amici Curiae filed this brief with the consent of all parties in support of the position advanced by respondents. Letters of consent have been filed with the Clerk of this Court.

INTEREST OF AMICI CURIAE

The thirty-one organizations joining in this brief as amici curiae (see Appendix B) represent many sections of American society with diverse interests. They share a mutual concern that the Court use the decision in this case to advance the commitment to rid our nation of the devastation of racial discrimination and race hatred. They are

aware of the difficulty of this task.

These groups share an understanding that the continued exclusion of Blacks and other minorities from meaningful political and economic participation in public safety agencies is a legacy of slavery and racial discrimination.

Amici all recognize the importance in preserving seniority. They believe, however, that the Constitutional mandate to remove the badges and incidents of slavery must take precedence in this conflict.

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES.....vi

SUMMARY OF ARGUMENT.....1

ARGUMENT.....4

I. THE LOWER COURT'S MODIFICATION OF THE CONSENT DECREES WAS AN APPROPRIATE EXERCISE OF JUDICIAL POWER PURSUANT TO THE THIRTEENTH AMENDMENT MANDATE TO ERADICATE THE BADGES AND INCIDENTS OF SLAVERY.....5

A. Introduction.....6

B. The Court's Equitable Authority to Modify The Consent Decree Is Not Limited By Section 703(h) or 706(g) of Title VII.....14

II. THE RECORD INDICATES THAT THE CITY OF MEMPHIS HAS FOLLOWED A PATTERN AND PRACTICE OF DISCRIMINATION AGAINST MINORITY FIREFIGHTERS.....26

III. THE DISTRICT COURT INJUNCTION WAS PROPER BECAUSE RESPONDENTS HAVE MADE A STRONG SHOWING THAT THE PROPOSED LAY OFFS WOULD HAVE VIOLATE TITLE VII AND THAT THEY WERE IRREPARABLY INJURED.....36

IV. CONCLUSION.....54

Appendix A- " Statistical Comparision of Black and/or Hispanic Representation In Fire

Departments" and In
Relevant Populations as
Made By Federal Courts
In Racial Discrimination
Cases During the 1970's

Appendix B- Amici Statements of
Interest

TABLE OF CASES AND AUTHORITIES

Cases

Albemarle Paper Co. v. Moody,
422 U.S. 405 (1975).....25,43

Bakke v. Regents of the University of California,
438 U.S. 265 (1978).....1

Boston Firefighters Union, Local 718 v. Boston Chapter NAACP,
___ U.S. ___, 103 S.Ct. 2076 (1983).....5,10,11,29

Brown v. Board of Education,
347 U.S. 483 (1954).....24

City of Memphis v. Green,
451 U.S. 100 (1981).....26

Civil Rights Cases,
109 U.S. 3 (1883).....passim

Clinton Street Greater Bethlehem Church v. Detroit,
484 F.2d 185 (6th Cir. 1973).....35

Detroit Police Officers Association v. Young,
608 F.2d 671 (6th Cir. 1979).....21,30

Donnel v. General Motor Company,
576 F.2d 1292 (8th Cir. 1978).....42

EEOC v. AT&T,

419 F.Supp. 1022, Aff'd 556 F.2d 167, cert denied, 478 U.S. 915 (1978).....23

Fullilove v. Klutznick,
448 U.S. 448 (1981).....1

Dothard v. Rawlinson,
433 U.S. 321 (1977).....51

Franks v. Bowman Transportation Co.,
424 U.S. 747 (1976).....43
General Contractors v. Pennsylvania,
__U.S.__, 102 S.Ct. 3141 (1982)...26

Griggs v. Duke Power Company,
401 U.S. 424 (1971).....40,41,53

Hazlewood School District v. United States,
433 U.S. 299 (1977).....31

International Brotherhood of Teamsters v. United States,
431 U.S. 324 (1977).....passim

Jones v. Alfred H. Mayer,
342 U.S. 409 (1968).....passim

Jones v. Texas Tech University,
656 F.2d 1137 (5th Cir. 1981).....35

Kirby v. Colony Furniture Company,
613 F.2d 696 (9th Cir. 1980).....42

Local Union No. 35 etc. v. City of Hartford,
625 F.2d 416 (2d Cir. 1980).....30

Marbury v. Madison,
5 U.S. (1 Cranch) 177 (1803).....15

McDonnell Douglas Corporation v. Green,
411 U.S. 792 (1973).....57

Muller v. United States Steel Co.,
509 F.2d 923 (10th Cir. 1975).....42

Neal Cooper Grain Co. v. Texas Gulf Sulpher Co.,
508 F.2d 283 (7th Cir. 1974).....34

Northwest Airlines v. Transport Workers,
451 U.S. 77 (1981).....29

Palmer v. General Mills Co.,
513 F.2d 1040 (6th Cir. 1975).....42

Parson v. Kaiser Aluminum and Chemical Co.,
575 F.2d 1274 (5th Cir. 1978).....46

Plessy v. Ferguson,
163 U.S. 537 (1896).....7

Runyon v. McCrary,
421 U.S. 160 (1976).....16

Robinson v. Lolliard,
444 F.2d 791 (4th Cir.) cert dismissed 404 U.S. 1006 (1971).....41

Scott v. Sanford,
60 U.S. (19 How.) 393 (1857).....6,21

South Florida Chapter etc. v. Metropolitan Dade County,
552 F.Supp. 909 (S.D. Fla. 1982)...30

Stotts v. Memphis Fire Department,
679 F.2d 541 (6th Cir. 1982) cert. granted,
___U.S.___, 103 S.Ct. 2451 (1983)...passim

Tangren v. Wakenhunt,
658 F.2d 606 (9th Cir. 1981).....23

Terrell v. United States Pipe and Foundry Co.,
644 F.2d 1112 (5th Cir. 1981).....30

Texas Dept. of Community Affairs v. Burdine,
450 U.S. 248 (1981).....51

Thomas v. Louisiana,
534 F.2d 613 (9th Cir. 1976).....35

United States v. Bethlehem Steel,
446 F.2d 652 (2d Cir. 1971).....42

United States Postal Service Board & Governors v. Aikens,
450 U.S. 248 (1981).....51

United States v. ITT Continental Baking Company,
420 U.S. 223 (1975).....33,37

United Steelworkers v. Weber,
443 U.S. 193 (1979).....29

Weber v. Kaiser Aluminum,
415 F.Supp. 761, Aff'd, 563 F.2d 216 (5th Cir. 1977).....1,23

William v. City of New Orleans,
694 F.2d 987 (5th Cir. 1982).....11,25

Constitutional Provisions

Article III.....5

Amendment 13.....passim

Statutes

Civil Rights Act of 1875.....6

Rule 201, Fed. Rules of Evidence, 28 U.S.C.....28

Title VII of the Civil Rights of 1964, 42 U.S.C. 2000e et seq.....passim

42 U.S.C. 1981.....16,18

42 U.S.C. 1983.....16,18

Other Authorities

Bartholet, Application of Title VII to Jobs in High Places, 95 Harv.L.Rev. 947 (1982).....52

Belton, Title VII of the Civil Rights Act: A Decade of Private Enforcement and Judicial Developments, 20 St. Louis L. Rev. 225 (1976).....42

Blumrosen and Blumrosen, The Duty to Plan for Fair Employment Revisted: Work Sharing In Hard Times, 28 Rutgers Law Review 1082 (1975).....51

Bureau of National Affairs, Special Report, Williams v. City of New Orleans.....25

Burke and Chase, Resolving the Seniority/Minority Layoffs Conflict: An Employer Targeted Approach, 13 Harvard Civil Rights-Civil Liberties Law Review 81 (1978).....50

Calamari and Perillo, Contracts

(2d edition).....34

The Commercial Appeal, Memphis, May 17, 1983.....5

Frankfurter, A Note on Advisory Opinions, 37 Harv.L.Rev. 1002 (1924).....5

Freeman, Black Economic Progress After 1964: Who Has Gained and Why in Rosen, Studies in Labor Markets, 1981.....49

Freeman, Changes in the Labor Market for Black Americans, 1948-1972 in Brookings Papers on Economic Activity.....50

Kinoy, The Constitutional Rights of Negro Freedom, 21 Rutgers L.Rev. 387 (1967).....17

Stacy, Title VII Seniority Remedies in a Time of Economic Downturn, 28 Vand. L.Rev. 487 (1975).....50

Summers and Love, Work Sharing As An Alternative to Layoffs by Seniority, 124 U.Pa. Law Review 893 (1976).....39

U.S. Commission on Civil Rights: Affirmative Action in 1980s', Dismantling the Process of Discrimination, 1981.....24

U.S. Commission on Civil Rights, Last Hired, First Fired: Layoffs and Civil Rights, 1977.....50,53

SUMMARY OF ARGUMENT

This is one of that handful of cases which raise issues going to the very heart of racial discrimination in the United States. In its affirmative action triolgy[1], this Court has ruled that affirmative action programs can sustain constitutional and statutory challenges. These challenges must be viewed in a larger context of what appears

---

[1] Bakke v. Regents of California, 438 U.S. 265 (1978), upheld the use of race consciousness to remediate the present and past effects of racial discrimination.

Within the Bakke era, this court decided in United Steelworkers v. Weber, 443 U.S. 193 (1979), that Title VII of the 1964 Civil Rights Act permitted a voluntary race conscious agreement between labor and management to desegregate the employment work force. Most recently this Court affirmed the power of Congress to enact remedial legislation in racial set-aside percentages of public works contracts for minority enterprises, long excluded by racial discrimination from competitive bidding. Fullilove v. Kutznick, 448 U.S. 448 (1981).

to be a second post-Reconstruction era where legal and political gains obtained by minorities after long struggle have been seen by many as working against the interest of whites. As in the previous cases, these challenges must be rebuffed. The accumulated effects of long years of racial discrimination have created material and structural differentials between Blacks and whites which cannot be remedied only by the creation of race-neutral guidelines for the present and future. The racial discrimination which exists today is a legacy of slavery that has long been a mainstay of the U.S. labor market. The persistent and pervasive exclusion and underrepresentation of Blacks from employment is a badge and incident of slavery subject to remedy though statutes and the Thirteenth Amendment.

That Amendment provides the legal context in which this case should be seen. It provides the framework in which Title VII operates. The modification of the consent decrees accomplished a result consistent with the constitutional mandates of the Thirteenth Amendment. Section 703(h) is but one section of Title VII and cannot logically be read to deprive the Court of equity jurisdiction to assure that progress toward racial equality is not impeded. The layoffs attempted by the City of Memphis perpetuate the historic cycle by which minorities and women are impacted first and worst. This is true not only because they are last hired because of historic discrimination, but also because they lack the power to influence the employer to seek alternatives to layoffs. The City of Memphis considered no alternatives other than layoffs to respond to its budgetary

difficulties. It did not attempt to consult with minorities before instituting its plan, notwithstanding the City's clear knowledge that the layoffs would disproportionately impact on minority workers and would eliminate all the gains accomplished under the negotiated consent decrees. The City, instead of exploring means that would counter its economic setbacks without adversely affecting minorities, chose to undercut its affirmative action goals and simultaneously escape legal liability through seniority based lay offs. The actions of the City are prohibited by the Thirteenth Amendment and Title VII, and the remedies adopted by the Courts below do not contravene §703(h).

ARGUMENT[2]

---

[2] As an initial matter, it is clear from (Footnote Continued)

I. THE LOWER COURT'S MODIFICATION OF THE CONSENT DECREES WAS AN APPROPRIATE EXERCISE OF JUDICIAL POWER PURSUANT TO THE THIRTEENTH AMENDMENT MANDATE TO ERADICATE THE BADGES AND INCIDENTS OF SLAVERY

(Footnote Continued)
the record that all of the firefighters laid off by the City of Memphis have been rehired. See, Petitioners' Brief in Opposition to Respondents' Suggestion of Mootness, pp. 2-3, and The Commerical Appeal, Memphis, May 17, 1982 at A12, attached to Respondents' Suggestion of Mootness. This change in the circumstances of the parties since the decision of the Court of Appeals removes the case or controversy necessary for the exercise of this Court's jurisdiction under Article III. The case should thus be deemed moot since it is in all relevant respects indistinguishable from Boston Firefighters Union, Local 718 v. Boston Chapter NAACP, ___U.S.___, 103 S.Ct. 2076 (1983). The magnitude of the issues presented for review by this case are of such dimension that they should not be addressed until a factual context arises which absolutely requires a decision from this Court. As Justice Frankfurter long ago pointed out with typical candor: "[I]ll considered advisory opinions before the event may become millstones around the necks of succeeding generations." Frankfurter, A Note on Advisory Opinions, 37 Harv.L.Rev. 1002, 1008 n.18 (1924).

Amici will not further address this issue since its fundamental nature assures that it will be adequately addressed by the parties.

A. INTRODUCTION

The amici believe the important doctrine of seniority should not become a convenient vehicle to steer the country toward a second repudiation of its civil rights commitments. The history of Black Americans begins with slavery and continues to the present economic crisis. America's main problem since slavery to the present period of economic retrenchment, continues to be the burden of racial stratification and the concomitant class disabilities.

One hundred years ago, several constitutional challenges to the Civil Rights Act of 1875, which prohibited discrimination in public accomodations or public places of amusement, came before the Supreme Court. In the Civil Rights Cases, 109 U.S. 3, (1883) the Court had to answer a fundamental

question: Did Congress have the power to pass legislation to enforce all of the substantive rights mandated by the Thirteenth and Fourteenth Amendments?

This decision culminated 15 years later in the Court's giving its legal blessing to racial segregation in Plessy v. Ferguson, 163 U.S. 537 (1896).

Although today discrimination may be more subtle and more refined, this Court is again faced with a fundamental question: Do the courts have the power to remove discrimination from the body politic and purge from this country the vestiges of slavery?

The Court's answer reflected the times. Justice Bradley, speaking for the majority, held inter alia that, although the Thirteenth Amendment clothed Congress with the "power to pass all laws necessary and proper for abolishing all badges and incidents of

slavery in the United States," he confined those badges and incidents to the legal disabilities imposed on slaves--such as not having the right to sign and enforce a contract or purchase and inherit property--the literal trappings of human bondage.

The restrictive versus expansive interpretation of badges and incidents of slavery between Justices Bradley and Harlan continues to be a critical choice for the Court today. Civil Rights Cases, 109 U.S. at 22, 36 (1883). Despite the Thirteenth Amendment, post-Reconstruction civil rights legislation, the elimination of "Jim Crow" segregation, the passage of the 1964 Civil Rights Act and other equal rights legislation in the 1960's and 1970's, plus countless court decisions advancing civil democracy for Blacks, the gaping disparate economic effects between Black and white groups continues to expand.

Thus, amici curiae submit that the Thirteenth Amendment must guarantee economic, as well as civil, democracy for Blacks in order for the Amendment to truly eliminate all badges and incidents of slavery[3].

The Thirteenth Amendment not only abolished the civil segregation of Blacks from conditions of involuntary servitude under chattel slavery but secured their right to compete for economic opportunities free of the burdens of race and previous servitude. Civil Rights Case, 109 U.S. 3 (1883); Jones v. Alfred H. Mayer Co., 342 U.S. 409 (1968).

Chattel slavery, the most barbaric condition known to human existence, both isolated the slave from social integregation

---

[3] As someone said, "What good is the right to eat at Woolworth's when you don't have the money to buy a hamburger?"

and exploited the value of the slave's human labor by forcefully extracting work without pay[4]. Because slavery profited most from the exploitation of Black slave labor.

If the Court in Jones v. Alfred H. Mayer Co., supra, 342 U.S. 409, traced discrimination in housing to slavery by linking housing discrimination to segregation, segregation to the Black Codes, and the Black Codes to slavery, then an equal analysis applies to the "last hired, first fired" doctrine and practice.

Just as in the first post-Reconstruction South the economic and political conditions re-established the plantation system and form

---

[4] For a full citation of authorities, see Brief for Amici Curiae of the Affirmative Action Coordinating Center, et al., in Boston Firefighters Union v. Boston Chapter, NAACP, ___ U.S.___, 103 S.Ct. 2076 (1983).

of "Jim Crow" segregation, the current economic cutbacks and the legal attack on the jurisprudence of affirmative action forms the basis for a second post-Reconstruction period of re-segregation throughout the United States[5].

---

[5] The U.S. Government, through Assistant Attroney General Bradford Reynolds of the U.S. Justice Department, asks this Court to subordinate the interests of race conscious affirmative action in favor of seniority; to overrule the interpretation of the U.S. Constitution permitting color-consciousness for remediation of racial discrimination with a declaration mandating absolute racial color blindness; to replace racial goals and quotas with no numerically fixed percentage; to reject discriminated groups and insist on proof of individual discrimination to justify remediation; and to supplant the jurisprudence of equality of results with the notion of equality of theoretical opportunity. See for example, the government briefs in Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP, ___U.S.___, 103 S.Ct. 2076 (1983); Williams v. New Orleans, 694 F.2d 987 (5th Cir. 1982).

Institutional and structural racism cannot be cured simply by establishing non-racial criteria on the pretense that our history has corresponded with our ideals. Successful steps to eliminate the accumulated effects of long, long years of racial discrimination must include direct action against the present vestiges of the white supremacist past.

In the instant case, the City of Memphis and the class of Black discriminatees entered a consent decree requiring employment of qualified Black firefighters to remedy the past systematic exclusion of Blacks. The City then chose to resolve unanticipated budgetary problems through a seniority based reduction in force program. Had the District Court not enjoined the City, the devastating impact of the City's "last hired, first fired" policy would have produced a disproportionately

adverse dismissal of Black firefighters and a shaper decline in the minorities on the force.

As a result, Blacks, the historic victims of slavery and racism, are once more forced to bear the burden of discrimination directly traceable to their skin color, previous condition of servitude and the advantages granted to whites. The "last hired, first fired" practices adversely affect Blacks because of the American institutional slavery and its consequences. Amici invoke the protections of the Thirteenth Amendment to the United States Constitution in an effort to eliminate the continuing badges and incidents of slavery.

Technically, this case involves whether a seniority system may be modified in the context where the parties have previously settled litigation. In reality, this Court's

action will send a message to the country, Congress and the courts as to the national commitment to reversing the relentless racism that darkens this nation's history.

B. THE COURT'S EQUITABLE AUTHORITY TO MODIFY THE CONSENT DECREE IS NOT LIMITED BY SECTIONS 703(h) AND 706(g) OF TITLE VII.

Petitioners have argued inter alia that the lower court did not have the equitable authority to modify the consent decree concerning the layoffs.

Petitioners in the Memphis Fire Department, in particular, assert that §703(h) prevents the Court from changing the seniority system where there were no findings of discrimination made to support such a modification. Also, they claim that §706(g) is violated since relief was accorded to beneficiaries of the consent decree who were not themselves adjudicated victims of racial discrimination in hiring.

The notion that sections of Title VII could limit the Court's equitable jurisdiction stands constitutional analysis on its head. It presumes laws passed by Congress are the framework within which the Constitution is interpreted. It has been a fundamental principle of constitutional law since Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), that the Constitution provides the framework within which all statutes are to be interpreted, not vice versa.

The Civil War Amendments in general, and for the purposes of this case the Thirteenth Amendment in particular, provide the constitutional framework and context in which to analyze both the lower Court's ruling and the Petitioners' arguments. Placed in this context it must be concluded that the Court has the equitable authority to modify the decree.

The Sixth Circuit in the present case supported its decision in general terms by reference to the policies inherent in Title VII and §§1981 and 1983 of 42 U.S.C. It emphasized how incongruent it would be if the Court were to be deprived of powers to vindicate the policies within these laws because the parties (acting in the explicitly preferred manner) had agreed upon and the court had entered a consent decree resolving the pending litigation.

Amici assert that the policies referred to by the Sixth Circuit have at least one source in the Thirteenth Amendment--its command to abolish all badges and incidents of slavery.

This Court in Jones v. Alfred H. Mayer Co., supra, 392 U.S. 409, and Runyon v. McCrary, 421 U.S. 160 (1976), in substance and effect, rejected the narrow view of

"badges and incidents" of slavery articulated by Justice Bradley in the Civil Rights Cases, supra,109 U.S. 3. The Court in Jones v. Mayer used language which embraced the spirit of Justice Harlan's dissent in the civil rights cases where Justice Harlan held the Thirteenth Amendment to protect Blacks from all discriminations based on race and concepts of racial inferiority[6]. Dred Scott v. Sanford, supra, 60 U.S. (19 How.) 393.

At the time plaintiffs in this action began their litigation, there was a gross underrepresentation of minorities in the Memphis Fire Department, especially in the higher ranks. A condition existed which plaintiffs believed violated Title VII, 42

---

[6] See generally, Kinoy, The Constitutional Right of Negro Freedom, 21 Rutgers L.Rev. 387 (1967).

U.S.C. §§1981 and 1983. The consent decrees, which were entered in 1974 and 1980, were designed to remedy that underrepresentation.

When the Thirteenth Amendment is the context in which the statutes and the consent decrees are analyzed it is clear the consent decrees accomplished a result consistent with the mandates of the Thirteenth Amendment. By operation of the consent decrees, efforts were to be made to overcome ongoing exclusion of Blacks from the Memphis Fire Department to promote social and economic equality between minorities and whites in Memphis.

Amici assert this exclusion is fundamentally connected with slavery. Jones recognized that the Thirteenth Amendment is self-executing and that civil rights laws embody Justice Harlan's broad definition of the badges and incidents of slavery. Consequently, all forms of race

discrimination are subjected to the anti-discrimination commands of the Thirteenth Amendment. In this context, §703(h) of Title VII cannot deprive the Court of its equity jurisdiction to insure that this progress toward racial equality is not impeded.

Section 703(h) is but one section of Title VII which enumerates illegal employer union conduct. It allows employers and unions to treat employees differently so long as that different treatment is based on a bona fide seniority or merit system and further provided that the difference is not the result of intention to discriminate.

Congress recognized that if a bona fide seniority system was the basis for differential treatment, illegal discrimination could not be faulted for such differences. Congress also recognized that the purpose of

seniority is to secure fairness in the work place by reducing managerial preogatives, not simply to protect the expectations of senior workers. Securing such fairness is consistent with purposes of Title VII and consistent with the mandates of the Thirteenth Amendment.

In the present case, seniority-based layoffs act contrary to basic fairness. They perpetuate the historic cycle in which minorities and women are impacted first and worst; not only because they are last hired but also because as groups they lack power to influence the employer to seek alternatives to layoffs.

Petitioners have argued that because this case was settled (and thus no findings of illegal discrimination were made with respect to hiring, promotion or the genesis of the seniority system) §703(h) deprives the

Court of equitable authority to modify the seniority system so as to secure the status quo.

Section 703(h), which defines an exception to employer liability cannot be viewed as imposing a limitation to the Court's equitable remedial power. This is especially true where such limitation would require the Court to reverse the course originally agreed on by the parties so as to impede progress toward fulfilling the promise and the mandates of the Thirteenth Amendment. Such an interpretatior would move against the grain of the Constitution. See DPOA v. Young, 608 F.2d 671, 697 (6th Cir. 1979).

Thus, consistent with the fundamental objectives of fairness, a strict seniority system may be modified by the Court where it is done to eliminate the vestiges of racial discrimination.

This interpretation does not require the Court to overrule its interpretation of §703(h) articulated in Teamsters v. U.S., 431 U.S. 328 (1976). The Court instead should harmonize its holding in Teamsters with the mandates of the Thirteenth Amendment. This can be done by limiting the consequences of Teamsters. The Court must find that §703(h) does not nullify the Court's action to prevent an erosion of the progress made under the consent decree.[7]

---

[7] In Teamsters, a Title VII case, the Court refused to invalidate a departmental seniority system which restricted the ability of minorities in the trucking industry to move from the lower-paid classifications to the higher ones. Finding that this "departmental" system predated minorities coming into the trucking industry, the Court refused to find that the separate lines of seniority for the different job classifications were negotiated with the intent to discriminate and thus §703(h) was not violated.

(Footnote Continued)

Congress was aware in 1964, when Title VII passed, of the conflict between seniority and the need to eliminate traditional patterns of inequality. The Thirteenth Amendment compels resolving this conflict in favor of eliminating the vestiges of slavery.

(Footnote Continued)

However, had the parties in Teamsters agreed and settled the case in a consent judgment which modified this seniority system for the explicit purpose of allowing minorities to move into the higher paying jobs, a court, consistent with the Thirteenth Amendment and this Court's opinion in Weber v. Kaiser Aluminum, 415 F.Supp. 761, aff'd 563 F.2d 216 (5th Cir. 1977), could not nullify that modification on the grounds that the prior system did not violate §703(h). See generally, E.E.O.C. v. A.T. & T., 419 F.Supp. 1022, aff'd 556 F.2d 167, cert denied, 438 U.S. 915 (1978). Similarly, if parties agreed to a proportional layoff procedure, such an agreement could not be invalidated under §703(h) even if the prior seniority system was arguably bona fide. See Tangren v. Wakenhunt, 658 F.2d 606 (9th Cir. 1981).

Petitioners argue that the Court's remedial jurisdiction is also limited by §706(g) to giving relief to only those adjudicated victims of discrimination. Such a narrow reading of Title VII would not only be inconsistent with the Thirteenth Amendment, it would be contrary to many previous decisions of this Court which have ruled on the issue. See cases cited in U.S. Commission on Civil Rights: Affirmative Action in the 1980's; Dismantling the Process of Discrimination, p.22 n.60 (1981).

Title VII, as part of the Civil Rights Act of 1964, was sweeping social legislation. It was passed in response to the reawakened civil rights movement which in turn was sparked by this Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954).

The Act has two purposes only, one of which is to make victims whole. The other is

to provide a "spur or catalyst" to employers to change their discriminatory ways. See Albemarle v. Moody, 422 U.S. 405 (1975). Title VII would be totally ineffective if employers could not, through their voluntary compliance with the terms of Title VII, give remedies to persons who were not previously adjudicated to be victims of discrimination. Indeed, it is inconceivable that §706(g) could apply at all to a court's power to grant prospective relief[8].

This Court has refused in numerous Thirteenth Amendment cases to delimit the constitutional imperatives the Amendment has

---

[8]This argument has been extensively made in a draft brief by the E.E.O.C. in Williams v. City of New Orleans, 694 F.2d 987 (5th Cir. 1982), en banc hearing ordered Feb. 14, 1983. See Bureau of National Affairs Special Report, Williams v. City of New Orleans, pp. 70-82.

been consistently held to contain. (See Jones v. Alfred H. Mayer Co., supra; Memphis v. Greene, 451 U.S. 100 (1981); General Contractors v. Pennsylvania, ___U.S.___, 102 S.Ct. 3141 (1982).

Amici do not urge resolving these issues in this case. Our position is that because the Amendment is self-executing, it automatically becomes the context within which civil rights legislation must be interpreted. Interpretations that perpetuate the badges and incidents of slavery must be avoided.

II. THE RECORD INDICATES THAT THE CITY OF MEMPHIS HAS FOLLOWED A PATTERN AND PRACTICE OF DISCRIMINATION AGAINST MINORITY FIREFIGHTERS

There is little dispute that the City's hiring policy, before the filing of lawsuits by the Department of Justice in 1974 and by respondent Stotts in 1977, was a particularly sordid one. As the Court of Appeals pointed out, between 1950 and 1976 the Memphis Fire

Department hired 1,777 firefighters, of whom only 94 were Black. 679 F.2d at 550 n.5. As late as the spring of 1981, Blacks constituted only 11% of the Memphis Fire Department while constituting approximately 35% of the population of the City of Memphis. Id. In light of this evidence the District Court was correct in concluding that prior discrimination by the City of Memphis was "obvious." Oral Ruling of the Court, May 8, 1981, App. to Pet. for Cert. at A76. That court went on to state in its order granting a preliminary injunction:

> While the consent decree entered in this matter does not admit racial discrimination on the part of the City, it would be naive of this Court not to believe that the fire department did not discriminate for a number of years in the past. Although this Court has made no findings of discrimination by the fire department, the Court takes judicial notice of past racial discrimination in the fire department based upon the statistical evidence presented in these cases.

Order Granting Preliminary Injunction, App. to Pet. for Cert. at A78. See also, App. to Pet. for Cert. at A73.

The District Court's decision to take judicial notice of the extent of discrimination, rather than require that it be proved, is specifically authorized by the Federal Rules of Evidence, Rule 201. That rule allows a district court to "accept as conclusive" facts "generally known" or "capable of accurate and ready determination." This Court has specifically upheld the taking of judicial notice of racial exclusionary practices in fields which have a long history of racial discrimination.[9] See

---

[9]The extent of historic racial discrimination in the hiring of municipal firefighters is illustrated by the Statistical Comparison of Black and/or Hispanic Representation in Fire Departments and in Relevant Populations as Made by Federal Courts in Racial Discrimination Cases (Footnote Continued)

United Steelworkers v. Weber, 443 U.S. 193 (1979). In that case, the Court established the procedure followed by the District Court below: It looked at the imbalance between the racial composition of the plant's craft workers and the surrounding area and took judicial notice of Blacks' traditional exclusion from that trade. 442 U.S. at 108, 109 n.1.

A similar procedure was utilized by this Court in Northwest Airlines v. Transport Workers, 451 U.S. 77 (1981). The Court there stated: "We assume that the respondent unions in this case, as well as unions in other

---

(Footnote Continued)
During the 1970's. This list was compiled by the Lawyers Committee for Civil Rights Under Law of the Boston Bar Association and was initially submitted to this Court in respondents' brief in Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP, ___ U.S. ___, 103 S.Ct. 2076 (1983).

industries, bear significant responsibility for discriminatory practices that these statutes [Title VII] were designed to prevent." 451 U.S. at 90 (emphasis supplied). A long line of cases has followed this Court's approach. See, e.g., Local Union No. 35, etc. v. City of Hartford, 625 F.2d 416, 422 (2d Cir. 1980); Terrell v. United States Pipe and Foundry Co., 644 F.2d 1112, 1119 (5th Cir. 1981); Detroit Police Officers Association v. Young, 608 F. 2d 671, 690 (6th Cir. 1979); South Florida Chapter, etc. v. Metropolitan Dade County, 552 F. Supp. 909, 926, n.13 (S.D. Fla. 1982).

The Sixth Circuit in this case acknowledged that the evidence presented was strong enough to justify taking judicial notice of past discrimination. That Court, however, buttressed its conclusion by finding that the evidence was also "strong enough to

create a strong prima facie case of racial discrimination." 679 F.2d at 555.

In Hazelwood School District v. United States, 433 U.S. 299 (1977), this Court held that "where gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination." 433 U.S. at 308, 309. And, in International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977), this Court pointed out that statistical proof of exclusion of minorities is often "a telltale sign of purposeful discrimination," and voiced its expectation that "claims of non-discriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired." 431 U.S. at 340 n.20. The facts of this case

underscore the degree to which the City of Memphis failed to meet that standard.

In the face of overwhelming statistical proof and two law suits, one of which was filed by the United States Department of Justice, the City of Memphis quite sensibly negotiated a consent decree in which it promised to overcome this history of discrimination, and instituted a hiring program for minority workers. The decree was, in essence, the City's agreement to meet the standard enunicated in Teamsters. It stated that the City would "undertake the goal of achieving throughout the workforce proportions of minority and female employees in each job classification approximating their respective proportions in the civilian labor force." 679 F.2d at 547. J.A. at 101. Although the City did not explicitly admit that it had engaged in "misconduct," 679 F.2d

at 547, it conceded that the statistical showing that had been presented "may create an inference of racial and sexual discrimination." Id.

The consent decree represented a binding contract between the City and the minority workers and would be specifically enforcable as written. See United States v. I.T.T. Continental Baking Co., 420 U.S. 223 (1975). In Continental Baking this Court noted that "consent decrees and orders have attributes both of contracts and judicial decrees... While they are arrived at by negotiation between the parties and often admit no violation of law, they are motivated by threatened or pending litigation and must be approved by the Court or administrative agency." 420 U.S. at 236 n.10 (emphasis supplied). The Court thus recognized that it is often the case that parties to a decree do

not admit violations of law, but that the refusal to make such an admission has no bearing on the decree's enforceability as a contract. As with a contract, performance under the consent decree cannot be excused because of economic hardship. Neal Copper Grain Co v. Texas Gulf Sulpher Co., 508 F.2d 283 (7th Cir. 1974); J. Calamari and J. Perillo, Contracts, 491 (2d Ed.).

The decision of respondents to place their hopes in the legal enforceability of the consent decree was made at a great sacrifice of their rights. The decree stated that it "resolved all claims" of the respondents and required of the respondents that they "shall seek no further relief from the acts, practices or omissions alleged in the complaint save to enforce the provisions of the decree," thereby waiving further relief. It was thus absolutely essential for

the respondents to insure that the court retain jurisdiction of the action to effectuate the purposes of the decree.[10] Because the decree operates as a judicial act, United States v. International Continental Baking Co., 420 U.S. 223, 236 n.10, a court has "an affirmative duty to protect the integrity of its decree." Stotts, 679 F.2d at 557. It was with this in mind that the District Court enjoined the City's layoff plans.

The statistical impact of the City's contemplated layoffs underscored the need for the District Court to perform this function.

---

[10]Cases have held that valid settlement agreements are "binding, final and as conclusive of rights as a judgment." Jones v. Texas Tech University, 656 F.2d 1137, 1142 n.2 (5th Cir. 1981); Thomas v. Louisiana, 534 F.2d 613, 615 (9th Cir. 1976); Clinton Street Greater Beth. Church v. Detroit, 484 F.2d 185, 189 (6th Cir. 1973).

As a group, the Black firefighters had accrued little seniority since the majority of them had been hired within the six-year period prior to the announced layoffs. As a result, it was estimated that nearly 60% of all firefighters affected by the demotions would have been minorities, and 46% of all minority firefighters would either have been laid off or demoted. 679 F.2d at 550. The Sixth Circuit concluded that the impact on minorities would have been "devastating," 679 F.2d at 546, and properly concluded that equitable relief was necessary.

III. THE DISTRICT COURT INJUNCTION WAS PROPER BECAUSE RESPONDENTS HAVE MADE A STRONG SHOWING THAT THE PROPOSED LAY OFFS WOULD VIOLATE TITLE VII AND THAT THEY WERE IRREPARABLY INJURED

The record indicates that the decision of the City of Memphis to lay off minority firefighters recently hired under the negotiated consent decrees targeted those

very workers, and was made without any consideration of available alternatives that would have allowed the City to accomplish its business purposes in a manner that did not have a discriminatory impact on minority workers[11]. Furthermore, the City did not provide the minority firefighters with an opportunity to put forth less discriminatory alternatives.

Petitioners argued that Section 703(h) and Temsters v. United States, 431 U.S. 324 (1977) insulate the decision to lay off employees because such lay offs were accomplished through a seniority system. In Teamasters, the seniority system was an

---

[11] The Court of Appeals found that the City's unilateral decision to lay off recently hired minority firefighters was unnecessary in light of available alternatives. 697 F.2d at 561, 563.

employment practice that had to be addressed in order to adjust the rights of minority workers seeking to transfer from inferior jobs to that of line drive. In place and operating, the seniority system automatically came into play. In a situation in which an employer confronts and economic reversal, however, the operation of a seniority system is not inevitable. It becomes involved only if the employer chooses to respond to its economic crisis through layoffs. This independent decision is then implemented through the seniority-based reduction in force policy[12]. Amici contend that this

---

[12] Professor Summers has advanced a similar distinction:

It is that prior decision--that some of the employees shall be given all of the available work while others are given none--that gives present effect to past

(Footnote Continued)

decision falls under Title VII disparate impact standard[13].

(Footnote Continued)
hiring discrimination.

> The ... question ... is whether, and within what limits, an employer can determine that available work will be distributed unequally among his employees rather than shared equally, when the unequal distribution perpetuates the effect of past discrimination.
>
> * * *
>
> When we focus on the antecedent decision to lay off, the question is whether the decision to reduce the number of employees was required by business necessity, or whether reducing the number of hours each employee worked would be a suitable alternative.

Summers and Love, Work Sharing as an Alternative to Layoffs by Seniority: Title VII Remedies in a Recession, 124 U.Pa.L.Rev. 893, 899, 918 (1976).

[13] Although not explicitly considered by the lower court the record also establishes that the city engaged in intentional discrimination in its decision to lay off employees. Petitioner City knew of the consent decree and that minorities had disporportionately low seniority status. By choosing to confront its economic problems

(Footnote Continued)

Since Griggs v. Duke Power Co., 401 U.S. 424 (1971), employment decisions that perpetuate the effects of past discrimination, even though neutral on their face and in their intent, are prima facie violations of Title VII. 401 U.S. at 430-432 (1971). In that case, this Court made clear that what was forbidden were "artifical, arbitrary, and unnecessary barriers to employment." 401 U.S. at 431. As the Court there pointed out, "the act proscribes not only overt discrimination but also practices that are fair in form, but

---

(Footnote Continued)
through lay off rather than alternative employment practices, petitioner City must have intended the inevitable result -- the repudiation of the consent decree. See generally Detroit Police Officers Ass'n v. Young, 608 F.d 671, 692-3 (6th Cir. 1979). The lower court's failure to rule on this issue stems not from a lack of evidence but from its failure to distinguish the decision to lay off employees from the method for implementing that decision.

discriminatory in operation. The touchstone is business necessity." Id.

Following Griggs, a number of courts held that not only must a decision which has a discriminatory impact be justified by "business necessity," but that "there must be available, no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact." Robinson v. Lolliard, 444 F.2d 791, 798 (4th Cir.) cert., dismissed, 404 U.S. 1006 (1971). As the Court stated in Robinson:

> [T]he test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. Thus the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be

> available no acceptable alternative polices or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact.

Virtually every jurisdiction has adopted this formulation of the test and applied it strictly. See Donnel v. General Motor Co., 576 F.2d 1292 (8th Cir. 1978); Kirby v. Colony Furniture Co., 613 F.2d 696 (9th Cir. 1980); Parson v. Kaiser Aluminum and Chemical Co, 575 F.2d 1374 (5th Cir. 1978); Muller v. United States Steel Co., 509 F.2d 923 (10th Cir. 1975); Palmer v. General Mills Co., 513 F. 2d 1040 (6th Cir. 1975): U.S. v. Bethlehem Steel, 446 F.2d 652 (2d Cir. 1971). In fact, the principal reason for rejecting most business justifications is a finding that there exist acceptable alternatives that have a less discriminatory impact. Belton, Title VII of the Civil Rights Act: A Decade of

Private Enforcement and Judicial Developments, 20 St. Louis L.Rev. 225, 256 (1976).

This Court has approved this analysis. In Albemarle Paper Co. v. Moody the Court stated that:

> [The employer] must meet the burden of showing that any given requirement [has].....a manifest relationship to the employment in question. If any employer does not meet the burden of proving that its tests are "job related" it remains open to the complaining party to show that other tests or selection devices without a similarly undesirable racial effect would also serve the employer's legitimate interest... Such a showing would be evidence that the employer was using it merely as a pretext for discrimination. 422 U.S. at 425 (emphasis supplied).

The applicability of these principles to the facts of this case is clear. The injury that the respondents were faced with in this case was the unilateral determination by the City of Memphis to adopt a layoff policy

which would clearly have a discriminatory impact on minority firefighters who had recently been hired under a negotiated consent decree. The racial impact of the layoffs on minority firefighters was sufficient to constitute a prima facie case of discrimination and simultaneously trigger a search for alternatives for dealing with the fiscal crisis that would have a less discriminatory impact. The Court of Appeals noted that the record indicated a number of alternatives that the City could have pursued that would have had a lesser racial impact. 679 F.2d at 548. Yet the City failed to consider any of these alternatives and furthermore refused to provide the minority firefighters with the opportunity to challenge the City's decision to lay off. Id.

At the preliminary injunction hearing Mayor Chandler and the City's personnel

director stated that the City did not consider possible alternatives. J.A. at 30, 44. The Mayor stated at the hearing that the 1981 lay-offs were the first that the City had experienced since previous budget crunches had been handled by a policy of attrition. A.J. at 36. However, at no point was it explained why a policy of attrition was not considered to solve the problem this time.

The City's refusal to consider alternatives was further compounded by its unwillingness to provide the minority firefighters the opportunity to suggest to the City alternative mechanisms for dealing with the financial crisis. The record reflects that even though the City was aware of the effect the lay-offs would have on minority firefighters, it refused to consult with them

before implementing its policy. See J.A. at 45.

Amici submit that consultation might have accomplished a resolution of the issues that are now before this Court[14]. Respondent minority firefighters were entitled to consult and suggest ways that the City could have accomplished its objectives short of outright layoffs.

---

[14]There are a number of policies that the City could have followed that would have resulted in harms less grievious than outright lay-offs. Some of these alternatives include general tax increases, various forms of work sharing, and different political choices among the programs to which fiscal revenues are to be allocated. See generally, Burke and Chase, Resolving the Seniority/Minority Layoffs Conflict: An Employer Targeted Approach, 13 Harvard Civil Rights-Civil Liberties Law Review 81 (1981); Summers and Love, Work Sharing As An Alternative to Layoffs by Seniority: Title VII Remedies in a Recession, 124 U.Pa. L.Rev. 893 (1976); Blumrosen & Blumrosen, The Duty to Plan for Fair Employment Revisited: Work

(Footnote Continued)

This Court has established that in Title VII cases, those complaining of the racial impact of an employment decision must have the opportunity to question the employers' actions and offer alternatives. Albemarle Paper Co. v. Moody, 422 U.S. at 425; U.S. Postal Service Board of Governors v. Aikens, ___ U.S. ___, ___ 103 S.Ct. 1478, 1482 n.5; Texas Dept of Community Affairs v. Burdine, 450 U.S. 248, 255-256 (1981); Dothard v. Rawlinson, 433 U.S. 321, 329. See also, Bartholet, Application of Title VII to Jobs in High Places, 95 Harv. L. Rev. 947, 1023-1026 (1982). The failure of the City to provide minority firefighters with this opportunity in the face of layoffs was properly considered by the District Court and

---

(Footnote Continued)
Sharing in Hard Times, 28 Rutgers Law Review 1082 (1975).

the Court of Appeals in their determination to enter the injunction.

The injunction was designed to prevent respondents from suffering clear irreparable injury. The minority firefighters had suffered a long history of discrimination at the behest of City officials in Memphis. The consent decrees provided them with the sole avenue of relief for the illegal actions of the City. They had waived all right to further litigation of the claims that were settled by the decree. The City itself implicitly admitted that these claims were strong. Yet it moved to undermine the decree by laying off the very people who the decree was designed to assist. In these circumstances, the attempt of the City to remove them from their jobs, depriving them of work experience, income, and personal dignity constituted irreparable injury subject to

alleviation by injunction. These injuries could not have been remedied through any means short of enjoining the City's contemplated lay-off plan. In essence, the Court below did what was necessary to remedy decades of discrimination by the Memphis Fire Department and fulfill the objectives of Title VII. Any other decision would have dealt a major blow to the hopes and promises that minorities and women have struggled to achieve throughout this country's history.

Although racial discrimination is still a persistent force in contemporary American life, Title VII and legal prohibitions of the various forms of employment discrimination have done much to bring minorities into the mainstream of the United States economy. See Freeman, Black Economic Progress After 1964: Who Has Gained and Why, in Studies in Labor Markets edited by Sherwin Rosen (University

of Chicago Press, 1981); Freeman, Changes in the Labor Market for Black Americans, 1948-1972, in Brookings Papers on Economic Activity 91-105 (1973); U.S. Commission on Civil Rights, Last Hired, First Fired, Layoffs and Civil Rights 7-14 (1977). Between 1964 (the year that Title VII took effect) and 1969 the median income of Black families rose by 32% and the unemployment rate for "Negroes and other races" dropped from 8.1% to 6.4%. Stacy, Title VII Seniority Remedies in a Time of Economic Downturn, 28 Vand. L. Rev. 487, 507 (1975).

A decision of this Court reversing the District Court and the Court of Appeals would certify to employers that Blacks and women, recent entrants into the mainstream economy because of past discrimination, can be dispensed with in hard times. Minorities and women would, "once again, as in World War II

be used as a reserve labor pool to be called upon only during emergency or prosperity[15]."

This Court's decision should be one which will ensure that in all possible instances, employers not resolve financial crises in ways which pit against each other the goals of minority equal employment opportunity and principles of seniority, and more importantly, in ways that pit the interests of white male workers against the interests of minorities and women. In this case the City of Memphis has carelessly engendered this conflict for the purpose of eliminating a short term fiscal crisis.[16]

---

[15] Blumrosen & Blumrosen, The Duty to Plan for Fair Employment Revisited: Work Sharing in Hard Times, 28 Rutgers Law Review 1082, 1085 (1975).

[16] The City has also, by its unilateral determination to lay-off minorities, sought

(Footnote Continued)

The City has brought on such a collision without giving consideration to the many possible ways that the conflict could have been avoided. In cases such as the one at bar, public anti-discrimination policy requires employers to consider all possible alternatives to layoffs based on seniority and consult with all persons facing layoffs to ascertain whether there are means and methods for handling the situation which do not undermine the concerns embodied in Title VII.

This Court has repeatedly expressed its concern that "childhood deficiencies in the education and background of minority citizens, resulting from forces beyond their

---

(Footnote Continued)
to undermine a negotiated consent decree which, if continued would provide real and lasting benefits to minority workers.

control, not be allowed to work cumulative and invidious burden on such citizens for the remainder of their lives." Griggs, 401 at 430, McDonnell Douglas Corporation v. Green, 411 U.S. 792, 806,(1973). Amici submit that these were also the motivating concerns of the courts below. Had the City been allowed to carry through its layoff policy, Blacks in Memphis would have been in nearly the same position with respect to employment as firefighters as they were in the 1950's, and without any possibility of seeking legal redress since they had placed all of their hopes in the consent decrees. Memphis would have been added to that long list of cities where "minorities represented only 10 to 12 percent of the work force (but) accounted for 60 to 70% of those being laid off..." U.S. Commission on Civil Rights, Last Hired First

Fired: Layoffs and Civil Rights 24-25 (1977).

IV. CONCLUSION

For all of these reasons the decision of the lower court should be affirmed.

Respectfully submitted

HUEY COTTON
The Affirmative Action
Coordinating Center
126 West 19th Street
New York, NY 10026
(212) 864-4000

JOHN BRITTAIN
National Conference of
Black Lawyers
126 West 19th Street
New York, NY 10026
(212) 864-4000

JEANNY MIRER
JULES LOBEL
National Lawyers Guild
853 Broadway, Suite 1705
New York, NY 10003
(212) 260-1360

FRANK E. DEALE
MORTON STAVIS*
Center for Constitutional
Rights
853 Broadway
New York, NY 10003
(212) 674-3303

ATTORNEYS FOR AMICI CURIAE

*Attorney of Record. Counsel wish to express their appreciation for the invaluable assistance of the following in the preparation of this brief: Mark Iyeki, a third year law student at New York University School of Law; Audrey Seniors and Maggie Thompson of the

Center for Constitutional Rights; and Linda Fullerton of Richmond, California.

APPENDIX A

Statistical Comparison of Black and/or Hispanic Representation in Fire Departments and in Relevant Populations

Made by Federal Courts in Employment Discrimination Cases During the 1970's

Political Subdivision	Minority Percentage in Fire Department	Minority Percentage In Population
1. Baton Rouge,LA	2%	27%
2. Baltimore,MD	13.7%	47%
3. Boston,MA	.9%	23%
4. Bridgeport,CT	.2%	41%
5. Buffalo,NY	1.2%	24.3%
6. Columbus,OH	2.31%	18.3%
7. Detroit,MI	7.5%	50%
8. Jacksonville,FL	12%	--
9. Los Angeles,CA	3.3%	29.1%
10. Memphis,TN	10%	33-37%
11. Minneapolis,MN	.3%	6.44%
12. New York,NY	5.6%	32%
13. Pittsburgh,PA	3.9%	20%
14. San Francisco,CA	.2%	43%
15. St. Louis,MO	11%	40%
16. St. Paul,MN	1.3-2%	8%
17. St. Petersburg,FL	3.9%	14.75%
18. Santa Ana,CA	4.5%	25.8%
19. Toledo,OH	1.8%	16%
20. Westchester County,		
NY-New Rochelle	3.9%	16.1%
Mt. Vernon	3.1%	36%
White Plains	3.4%	15.4%

Source of Data

1. United States v. City of Alexandria, 614 F.2d 1358, 1360 (5th Cir. 1980)
2. Harper v. Mayor and City Council of Baltimore, 359 F.Supp. 1187, 1193 (D.Md.), aff'd in part and modified in part sub nom. Harper v. Kloster, 486 F.2d 1134 (4th Cir. 1973)
3. Boston Chapter NAACP, Inc. v. Beecher, 371 F.Supp 507, 514 (D.Mass.), aff'd 504 F.2d 1017 (1st Cir. 1974) cert. denied, 421 U.S. 910 (1975)
4. Ass'n Against Discrimination v. City of Bridgeport, 647 F.2d 256, 265 (2d Cir. 1981), cert. denied, 455 U.S. 988, (1982)
5. United States v. City of Buffalo, 457 F.Supp. 612, 621 (W.D.N.Y. 1978), aff'd, 633 F.2d 643 (2d Cir. 1980)
6. Dozier v. Chupka, 395 F.Supp. 836, 840 (S.D. Ohio 1975)
7. Van Aken v. Young, 541 F.Supp. 448, 460 (E.D. Mich. 1982)
8. Corley v. City of Jacksonville, 506 F.Supp. 528, 530 (M.D. Fla. 1981)
9. Davis v. County of Los Angeles, 566 F.2d 1334, 1337 (9th Cir. 1977), vacated as moot, 440 U.S. 625 (1979)
10. Stotts v. Memphis Fire Department,679 F.2d 541, 550 (6th Cir. 1982) cert granted ___U.S.___, 103 S.Ct. 2451 (1983)
11. Carter v. Gallagher, 452 F.2d 315, 323, modified on rehearing en banc 452 F.2d 327, 328 (8th Cir.), cert. denied, 406 U.S. 950 (1972)
12. Vulcan Society of the New York City Fire Department, Inc. v. Civil Service

Commm'n of the City of New York, 490 F.2d 387, 398 (2d Cir. 1973)

13. Commonwealth of Pennsylvania v. Glickman, 370 F.Supp. 724, 729 (W.D.PA. 1974)
14. Western Addition Community Organization v. Alioto, 369 F.Supp. 77, 79 (N.D. Cal. 1973), appeal dismissed as moot, 514 F.2d 524 (9th Cir. 1975), cert. denied, 423 U.S. 1014 (1975)
15. Firefighters Institute for Racial Equality v. City of St. Louis, Missouri, 616 F.2d 350, 363 (9th Cir. 1980), cert. denied, 452 U.S. 938 (1981)
16. Fowler v. Schwarzwalder, 351 F.Supp. 721, 723 (D.Minn. 1972)
17. League of United Latin American Citizens v. City of Santa Ana, 410 F.Supp. 873, 879 (C.D.Cal. 1976)
19. Brown v. Neeb, 644 F.2d 551, 555 (6th Cir. 1981)
20. Vulcan Society of Westchester County, Inc. v. Fire Department of White Plains, 505 F.Supp. 955, 958 (S.D.N.Y. 1981)

INDEX TO APPENDIX B

Affirmative Action Coordinating Center 1a

All Peoples Congress 7a

Asian Law Caucus, Inc. 9a

Association of Oregon Black Lawyers 11a

Black Educators' Alliance of Massachusetts 13a

Black Women for Policy Action 14a

Boston Mobilization for Survival 15a

Center for Constitutional Rights 6a

Chinese-American Citizens Alliance 16a

Council of Minority Educators In Massachusetts Public Colleges and Universities 17a

Educators United 18a

Esperanza Unida 19a

Gray Panthers 21a

La Alianza Legal De Oregon 23a

La Casa Legal 25a

La Raza Central Legal 26a

League of Martin 27a

Massachusetts Citizens Against the Death Penalty 29a

Massachusetts State Division, American Association of University Women 30a

Minority Law Students Association 31a

National Anti Racist Organizing Committee 32a

National Conference of Black Lawyers 3a

National Lawyers Guild 5a

New England Minority Women In Business 35a

Parish Council of Holy Angels Catholic Church 36a

Vulcan Pioneers of Newark, N.J. 37a

Willamette Valley Immigration Project 38a

Women's Bar Association of Massachusetts 39a

Women's Coalition, Inc. 40a

Women for Economic Justice 42a

Women's Job Counseling Center 44a

APPENDIX

AMICI STATEMENTS OF INTEREST

The AFFIRMATIVE ACTION COORDINATING CENTER (AACC) is an organization created by the National Conference of Black Lawyers (NCBL), the Center for Constitutional Rights (CCR) and the National Lawyers Guild, (NLG), with the participation of a cooperating network of civil rights, civil liberties, and other organizations. Many network organizations, as well as other groups, have joined as amici in this brief.

The AACC was formed in response to the proliferation of attacks on affirmative actions programs. Its purposes are to stimulate and coordinate resources and legal strategies for the defense and expansion of affirmative action programs. The AACC has convened roundtables of civil rights,

labor and women's rights attorneys to discuss the WEBER, BAKKE, FULLILOVE, and WHITE cases.

AACC publishes an informational newsletter entitled AACC News. It is preparing several plain language publications on affirmative action in education and employment. The AACC has conducted and is planning other activities designed to increase communications and enhance joint efforts by all groups and individuals interested in strengthening effective affirmative action programs.

The NATIONAL CONFERENCE OF BLACK LAWYERS (NCBL) is an activist legal organization of Black lawyers, law professors, judges and law students dedicated to serving as the legal arm of the Black community. Since its inception in 1968, NCBL has been actively involved in the continuing struggle for equal employment opportunity. Over the past five years, NCBL has led the struggle for the full implementation of the principles of affirmative action that have been affirmed by the Congress and the Courts. We are intimately concerned about how the operation of the last-hired, first-fired principle, if applied in this case, would disproportionately affect our constituency. Therefore, we urge this Court to find the modifications of the consent decree in this case to be a valid expression of the National

mandate against race discrimination.

The NATIONAL LAWYERS GUILD (NLG) was founded in 1937 as a multi-racial and progressive alternative to the racially restrictive, conservative American Bar Association. Its commitment to civil rights dates back to efforts to eliminate the poll tax and white primaries. In 1962, the Guild dedicated its full resources to the legal support of the civil rights movement. In support of affirmative action, the Guild filed briefs in every affirmative action case since Bakke. The Guild standing committees, Affirmative Action/Anti-Discrimination and the National Committee to Combat Women's Oppression, have specifically considered and adopted the position advocated herein.

The CENTER FOR CONSTITUTIONAL RIGHTS (CCR) was born of the civil rights movement and the struggles of Black people in the United States for true equality. CCR attorneys have been active in cases involving voting rights, jury composition, community control of schools, fair housing and employment discrimination. Through litigation and public education, they have worked to protect and make meaningful the constitutional and statutory rights of women, Blacks, Puerto Ricans, Native Americans and Chicanos.

The ALL-PEOPLES CONGRESS has, since its inception, made the struggle against racism and bigotry a priority in all of its initiatives. The All-Peoples Congress was born in Detroit where 3,000 grassroot organizers - Black, Latin, Asian, Native Indian and White gathered to plot strategies to fight Reagan's racist, sexist, anti-people budget cuts. A leading member of the All-Peoples Congress, Larry Holmes, was a co-coordinator of the NY Committee to overturn the Bakke decision. He also wrote a pamphlet entitled "Weber is Wrong, the United Steelworkers are Right: The Case for Affirmative Action." The All-Peoples Congress has been a participant in the struggle for affirmative action in Local 26 of the Hotel and Restaraunt Employees Union, in the United Steelworkers of America, and in Local 8751 representing the Boston school bus

drivers. The All-Peoples Congress supports the holding of the court below.

THE ASIAN LAW CAUCUS, INC., is a community-based law office serving the Bay Area Asian community. Established in 1972, we handle cases in the areas of employment/labor, immigration, and general civil rights. We have worked with the Asian-American Legal Defense and Education Fund very closely for the past five years, and are active in the National Lawyers' Guild.

We support the arguments put forth in the AACC brief asking the court to maintain strong affirmative action programs when findings of racial discrimination have been made. In the long run, it is in the interest of all workers to support anti-racist measures which attempt to remedy the injustices of past and current discrimination.

Although seniority is an important tool to protect against arbitrary actions by employers, we recognize that

seniority, when combined with racist policies, perpetuates discrimination and locks generations of minorities out of key sectors of employment.

We note that there is historic violence and harassment perpetrated by police departments upon Asian and other minority communities nationwide. Although we believe that an integrated police force will not resolve this situation, we would support all efforts to gain affirmative action in public and private employment.

The ASSOCIATION OF OREGON BLACK LAWYERS was founded in 1978. Our purpose is to increase the number of Black Lawyers in the State of Oregon. To fulfill this objective, we encourage young Black students to pursue legal education. Through various fund raising activities we have been able to generate funds for scholarships for Black law students enrolled in Oregon law schools.

The Association for Oregon Black Lawyers represents the majority of Black lawyers in the State of Oregon. Our members feel strongly that affirmative action initiatives such as the one invoked by the court below in the Stotts v. Memphis Fire Department ruling are essential to reaching full equality in employment opportunities. We believe that economic cutbacks do not provide sufficient justification

for reversal of the progress towards equal opportunity in employment, and we fully support continued enforcement of the original consent decree.

BLACK EDUCATORS' ALLIANCE OF MASSACHUSETTS, was created for the purpose of advocating and lobbying for the interests of minority administrators, teachers, parents and students in Massachusetts. The Alliance, previously the Negro Teachers' Association, was founded during the mid-sixties in response to the lack of representation of minority issues in the teachers' unions and school committees. Its major goal is to advocate quality education and affirmative action. The Alliance represents several hundred Black teachers and administrators, and is an associate member of the New England Black Educators' Association. The Alliance, which faced similar attacks in the education sector, supports the holding of the court below.

BLACK WOMEN FOR POLICY ACTION is a Boston area organization which has as one of its mandates securing jobs for minorities in all sectors of the economy. Since 1977 it has been active in local politics to ensure access for women and minorities in the mainstream. We, wholeheartedly, support the efforts being made to protect gains made by minorities in obtaining work through affirmative action efforts.

BOSTON MOBILIZATION FOR SURVIVAL is a political organization bringing together individuals interested in nuclear disarmament, economic justice, social equality, and political freedom. Through public education and political action, we seek to create positive social change. We work toward a world free of economic exploitation of national minorities, and institutions which perpetuate racism, sexism, and other forms of discrimination. Our organization supports the holding of the court below.

The CHINESE-AMERICAN CITIZENS ALLIANCE was founded in 1895. We are concerned with all issues affecting Asians and other minorities in this country. We are especially dedicated to changing the unfair immigration laws that affect our minority populations.

Chinese-American Citizens Alliance has 15 chapters throughout the United States and over 2,000 prominent members.

The COUNCIL OF MINORITY EDUCATORS IN MASSACHUSETTS PUBLIC COLLEGES AND UNIVERSITIES is an organization of minority faculty and staff representing the twenty-nine state supported campuses in Massachusetts. The purpose of the organization is to provide a network to keep minorities abreast of issues affecting them and minority students.

The organization is supportive of affirmative action programs and believe they must be upheld even during times of fiscal constraint. For this reason the Council is pleased to join in support of this brief.

EDUCATORS UNITED is a multi-racial organization of teachers and aides who work in the Milwaukee Public School System. Our purpose is to work for equal and quality public education.

We strongly believe that our government must ensure equality for minorities in the workplace through preferential treatment in hiring and layoffs. This is the only way past vestiges of discrimination will be eradicated and minority represenation in the public workforce raised to a level that reflects the composition of the constituencies that are being served.

ESPERANZA UNIDA is a non-profit social service and educational community organization which serves injured and unemployed workers. The majority of the people we serve are spanish-speaking. Our organization has over 500 members and gives services to between 500 and 750 people per month. One of the primary concerns of our work is to return the injured and unemployed people we serve to the job market. We experience everyday the effects of discrimination in this job market. The use of affirmative action has done much to give hope to our community. Any erosion of this principal, which is intended to correct the effects of discrimination, would be devastating to us. We also believe that the principal of equal participation of all people in the job opportunities of our communities is essential

to stability. The preservation of this principal must be considered as more valuable to our society than the principles with which it conflicts. Without the continued use and support of affirmative plans the idea of equality has no meaning to us.

The GRAY PANTHERS were founded in the early 1970's as a direct outgrowth of the Anti Vietnam War movement and in opposition to the draft, one of the worst ageist institutions in our society. We are an advocacy organization currently dealing with issues of ageism and its effects upon the older and younger citizens of this country.

We are presently involved in advocating around problems of housing, health care, job discrimination, forced retirement, transportation, education, Social Security cutbacks, Medicare cutbacks and issues around nuclear disarmament, peace and U.S. policy in Central America and elsewhere. We work in coalition with other groups working with the same problems. We represent the nearly 25 million older members of this society over the age of 65 and struggling with the problems listed.

Our goal is to reconcile the disparate elements of this society and to create a more equal distribution of the benefits based upon human needs and not upon criteria that tend to separate people, such as race, age, sex, national origin. The Gray Panthers strongly support the decisions of the United States District Court and the United States Court of Appeals for the Sixth Circuit.

LA ALIANZA LEGAL DE OREGON (LALO), the association for hispanic attorneys and law students of Oregon was founded to advocate for the legal, political, and employment rights of hispanics. LALO has been involved in advocating for increased minority representation in the legal profession, assisting in career days, providing legal assistance to hispanic community groups, assisting with voter registration and naturalization, monitoring and lobbying on legislation affecting the hispanic community, and monitoring employment of hispanics in the legal profession.

Possessing knowledge of the hispanic community both from a personal viewpoint and from involvement in the community, LALO members are in a good position to assess the effects of legal decisions on that community. LALO opposes allowing union seniority to

wipe-out gains achieved by minorities under affirmative action and urges that the decision of the 6th Circuit in Stotts be affirmed.

LA CASA LEGAL is a chicano law firm with four attorneys located in San Jose, California. Since ninety percent of our clientele is mexican-american, we are familiar with the attitudes of the local chicano community on the issues raised by cases such as Stotts v. Memphis Fire Department. There is no question but that the vast majority of the community we serve would not regard economic cutbacks as sufficient justification to depart from the affirmative action goals reflected in the original Consent Decree. For this reason, we urge you to affirm the decision of the court below.

LA RAZA CENTRAL LEGAL was established for the purpose of providing civil legal representation to low and moderate income spanish-speaking persons. The Community Law Center was founded in 1973 in response to the private Bar's inability to provide adequate counsel to non-english speaking persons facing a variety of serious legal problems, ranging from employment discrimination to wrongful eviction.

The organization represents the hispanic community, many of whose members were hired under affirmative action plans. Because many of these employees would face increased risk of lay-off or demotion if the position of the City of Memphis is upheld, La Raza Central Legal supports the injunctive relief ordered by the U.S. District Court.

The LEAGUE OF MARTIN is a nonprofit organization incorporated in 1974. Members of the League of Martin have been Milwaukee police officers and the organization's primary concern is racial discrimination within the Milwaukee Police Department. The League of Martin has undertaken numerous activities to eliminate discriminatory employment practices of the City of Milwaukee Police Department including filing of charges of discrimination with the United States Equal Employment Opportunity Commission and litigation.

With respect to litigation, the League of Martin and individual black Milwaukee police officers are plaintiffs in a certified class action, League of Martin, et al., v. City of Milwaukee, et al., 81-C-1464, pending in the United States District Court of the Eastern District of Wisconsin. The League of

Martin has also protested unlawful race discrimination in complaints to the Office of Revenue Sharing of the United States Treasury Department.

The League of Martin has consistently acted upon its belief that race discrimination is harmful not only to the victims of the discrimination but also to the legitimate objectives of professional, competent, and fair law enforcement. The League of Martin encourages and supports the use of affirmative action plans to correct the effects of past discrimination.

MASSACHUSETTS CITIZENS AGAINST THE DEATH PENALTY is a coalition of five thousand individuals and organizations who have opposed the restoration and implementation of the death penalty in Massachusetts for the last two years. The race discrimination which permeates the imposition of the death sentence has been judicially recognized by the Massachusetts Supreme Judicial Court in Watson v. District Attorney, 1980 Mass. Adv.Sh. 2231 (1980), and by this Court in Furman v. Georgia, 408 US 238 (1972). Our entire campaign against such racism documents our support for the affirmative action remedy necessary for the Memphis Fire Department.

The MASSACHUSETTS STATE DIVISION, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN was organized more than 100 years ago to advance opportunities for women. Today more than 190,000 college-educated women across the country comprise the membership of this Association.

As part of this network, the Massachusetts State Division supports the concept of affirmative action as a vehicle to open areas of employment for women and minorities, and to create equity in the workplace. We oppose lay-off policies which will weaken and/or negate advances made through affirmative action programs.

The Massachusetts State Division of the AAUW strongly supports the holding of the court below.

The MINORITY LAW STUDENTS' ASSOCIATION (MLSA) of Lewis & Clark Law School is a group of law students whose purpose is to increase the number of minority students at the Law School and to advance the interests of minorities in general. As a group, MLSA benefits from affirmative action programs and we think that a layoff policy based solely on seniority would clearly discriminate as to minority workers.

There should be more equitable guidelines to determine the order of layoffs. A decision supporting layoff of workers by order of seniority would only serve to eliminate the equality of treatment that affirmative action has so far achieved throughout the nation.

The NATIONAL ANTI RACIST ORGANIZING COMMITTEE (NAROC) is a multi-racial, community based organization headquarted in Oakland, California,with chapters and affiliates in New York, Washington, D.C., Boston, San Francisco Bay Area, Los Angles, Seattle, Miami, Chicago, Louisville, and Fresno, California. Our work is dedicated to eliminating the system of racial inequality and achieving full equality for all in the political, economic, social, and cultural life of the United States.

NAROC grew out of the massive effort to overturn the Bakke decision during its consideration by the U.S. Supreme Court in 1977. We continue to see the defense and expansion of affirmative action as a national priority, as it is important to assure that business and government take concrete steps toward the elimination of institutionalized

racism in employment.

NAROC appears as an amici because Stotts v. Memphis Fire Department represents a serious challenge to affirmative action programs necessary to abolish the patterns and practices of institutionalized discrimination which have historically excluded people of color and women from equal employment opportunities. We affirm respondent's contention that plaintiff's complaint is now moot. If the issues are reached, we maintain that, while seniority is an important tool against arbitrary actions by employers, seniority systems can also perpetuate segregated employment patterns. For this reason, we support a modification of the seniority system for layoff from the Memphis Fire Department ordered below.

The NATIONAL COMMITTEE TO COMBAT WOMEN'S OPPRESSION (NCCWO) of the National Lawyer's Guild was established to provide a women's focus for Guild work in various areas of its involvment, including employment, education, and economics. Since its inception in 1975, NCCWO has furthered this goal by coordinating the work of local and national group efforts to end sexism, and educating the Guild membership and the public on issues of importance to women. NCCWO recognizes the necessity to maintain strong affirmative action programs in order to remedy employment discrimination against minorities and women. Our organization, therefore, supports the holding of the court below.

NEW ENGLAND MINORITY WOMEN IN BUSINESS is an organization of fifty minority women who own their own businesses and who are interested in entrepreneurship as a viable career alternative. We are concerned with the economic development of the Black Community and feel that entrepreneurship and higher paying jobs like civil service jobs have been closed to the minority community. We support the right of Black people to economically maintain their families and community.

THE PARISH COUNCIL OF HOLY ANGELS CATHOLIC CHURCH at 3970 N. 12th Street, Milwaukee, is organized as the elected governing body of parish concerns. As a Church ministering to the needs the people of inner city Milwaukee, especially minorities, a chief concern has been the injustice to which minorities have been subjected. Affirmative action policies are one remedy for past exclusion from employment opportunities. Therefore, the Parish Council is very interested in the case of Stotts v. Memphis Fire Department. The council sincerely hopes that efforts to create justice in the workplace will not be reversed.

The VULCAN PIONEERS OF NEW JERSEY OF NEWARK, N.J. is an organization composed of minority firefighters formed in 1957. Our major purpose and goal is to promote interracial progress in the fire service and to see that competent blacks are recruited and employed as firefighters, and also to aid in motivating our members to seek advancement to elevated ranks throughout the fire service. The Vulcan Pioneers of N.J. support the holding of the lower courts.

The WILLAMETTE VALLEY IMMIGRATION PROJECT, founded in 1977, serves the Willamette Valley's Mexican community, centered in Woodburn, Oregon, in legal matters relating to immigration and political work on issues of broad concern to the Mexican community such as discrimination and equal justice. Many of those affirmative action benefits at stake in the Stotts case have yet to reach this community. Both our organization and the community we serve support the protection and strengthening of such benefits, especially in hard economic times.

The WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS (WBA) is a state-wide organization of approximately 500 women attorneys committed to improving the status of women both inside and outside the legal community. The WBA is involved in issues of interest to women and to women lawyers. The WBA is particularly interested in ensuring that women and minorities receive the full protections of anti-discrimination laws, and that those laws be interpreted broadly to afford adequate protections.

THE WOMEN'S COALITION, INC. is an umbrella organization of thirteen women's organizations in Milwaukee, Wisconsin. The Coalition was established in 1972 to meet the needs of Milwaukee area women through organizing, establishing services, providing a meeting place for women, and creating a centralized information and referral service. Among its activities has been sponsoring annual "Take Back the Night" demonstrations and activities related to the problem of sexual assault and violence against women, and thousands of persons have participated in these actions locally.

The Women's Coalition has always been committed to advocating equal rights and access by minorities and women in American society. The coalition also perceives there to be a substantial problem in Milwaukee regard-

ing police community relations, and believes affirmative action in hiring and retention of minorities and women to be an essential element of ameliorating such problems.

WOMEN FOR ECONOMIC JUSTICE, INC. was established by former members of the Massachusetts Governor's Commission on the Status of Women to publicize and ameliorate the economic problems which affect women in our economy. Toward that end we have instituted economic literacy programs around the state providing information to other women's groups. As part of that program we help women understand the relationship between economic status and racism and have held conferences on the issue of pay equity. A primary objective of our organization is the furtherance of affirmative action for women and third world people and the elimination of all forms of employment discrimination. We believe that the ability of the Court to maintain during a layoff the progress made in hiring minority

fire fighters is crucial to an ultimate end to racial discrimination.

The WOMEN'S JOB COUNSELING CENTER, formed in 1979, exists to help women who have fallen between the cracks to obtain employment that has a future. We test women for job skills and counsel them. We also train women in developing skills which will help them obtain employment. We support the plaintiffs in this suit becasue we know that minorities and women face similar problems in the workplace, that must be remedied by increased affirmative action measures.